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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	
Interexchange Carrier Purchases of Switched)	CCB/CPD File No. 98-63
Access Services Offered by Competitive)	
Local Exchange Carriers)	
)	
Petition of U S West Communications, Inc.)	CC Docket No. 98-157
for Forbearance from Regulation as a)	
Dominant Carrier in the Phoenix, Arizona MSA)	

COMMENTS OF CABLE & WIRELESS USA, INC.

Cable & Wireless USA, Inc. ("C&W USA"), by its attorneys, hereby submits the following Comments in response to the Commission's Further Notice of Proposed Rulemaking ("Notice") in the proceeding captioned above.¹ In this proceeding, the Commission is considering additional changes to its rules governing the provision of interstate access charges. C&W USA is a preeminent provider of data, Internet, and long distance services, with ongoing plans to integrate and upgrade its networks in order to provide a full range of integrated, basic, and advanced telecommunications services packages to consumers. As such, C&W USA has a direct and vital interest in the outcome of this proceeding.

In these Comments, C&W USA will address three issues raised by the Commission's Notice: the treatment of access charges imposed by competitive local exchange carriers ("CLECs"); the appropriateness of capacity-based rate structures for local switching; and the

¹ FCC 99-206, rel. August 27, 1999.

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adoption of additional forms of regulatory relief for those incumbent local exchange carriers (“ILECs”) that are subject to price cap regulation. As discussed below, C&W USA believes that CLEC terminating access charges should be subject to a presumption of reasonableness based on FCC-approved benchmarks and require cost justification if in excess of the benchmark. The Commission’s proposal regarding capacity-based rate structures is unclear at best, and may severely hinder the ability of small interexchange carriers (“IXCs”) to compete in the long distance market if per-minute rates for local switching and shared transport are eliminated altogether. Finally, the Commission’s proposals to provide additional measures of regulatory relief to price cap ILECs warrant no further consideration at this time.

I. THE COMMISSION SHOULD ESTABLISH BENCHMARKS TO EVALUATE THE REASONABLENESS OF CLEC TERMINATING ACCESS CHARGES.

In the Notice, the Commission seeks comment on the reasonableness of CLEC access charges, and asks whether it should adopt rules to address any failure of market forces to constrain CLEC access rates.² While the Commission is reluctant to regulate the rates charged by CLECs, it recognizes that reliance on marketplace forces alone may not be sufficient, and thus seeks “the least intrusive means possible” to correct market failures.³

As C&W USA has previously advised the Commission, we have received access bills from some CLECs which reflect higher per-minute rates than C&W USA believes are justified.⁴ As such, it is C&W USA’s position that some FCC-approved measure of reasonableness for CLEC access charges would serve the public interest. While C&W USA believes that regulatory

² Notice at ¶ 33.

³ Notice at ¶¶ 238, 256.

⁴ See Comments of C&W USA on AT&T Petition for Declaratory Ruling re Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, CCB/CPD No. 98-63, filed Dec. 8, 1998, at 1.

intervention is appropriate under these circumstances, we also share the Commission's apparent view that the public interest would not be served by imposing the existing access charge rules on the CLECs. Such action would undoubtedly discourage the further development of competition in the still nascent competitive access market, to the ultimate detriment of U.S. consumers.

From C&W USA's perspective, the best solution to this problem is for the Commission to establish benchmark rates for terminating access, as the Commission suggested in its Notice.⁵ The Competitive Telecommunications Association ("CompTel") proposes one such scheme in its comments in this proceeding, and C&W USA endorses its approach. Under CompTel's proposal, each CLEC operating in a particular area would choose a benchmark rate from a list of Commission-approved options – either the comparable access rate of the ILEC serving the same territory, or some other rate set by the FCC as a reasonable proxy. As long as the CLEC's terminating access rate is equal to or less than the chosen benchmark, the CLEC's charge would be presumed reasonable. The CLEC could charge a higher terminating access rate if it so desired, but to do so the CLEC would be required to submit the rate to Commission review and provide appropriate cost support.

C&W USA believes CompTel's suggested approach is a reasonable solution to the problem of CLEC access rates. It is apparent to C&W USA from its own experiences that reliance on marketplace forces cannot assure the reasonableness of CLEC terminating access charges in every case. Approaches suggested in the Notice that could "enhance" the workings of the market are problematic in their own right. Any solution that results in long distance carriers refusing to terminate calls to selected CLECs will create chaos for consumers. Furthermore,

⁵ Notice at ¶ 247. C&W USA suggests that the benchmarks need only apply to terminating access as there has been no demonstrable problem with CLEC rates for originating access.

continually negotiating terminating access rates with CLECs nationwide would be an administrative nightmare for long distance carriers.

In contrast, establishing and enforcing benchmark rates for CLEC access charges would give assurance to long distance carriers that the rates they pay for terminating access are reasonable, yet would not impose significant regulatory burdens on the CLECs. While this regulatory approach will require the Commission to set parameters for benchmark rates and review CLEC charges that exceed those benchmarks, it can be implemented more easily than other regulatory solutions suggested in the Notice (*e.g.*, called-party-pays or end-user-pays), and it avoids the need for the Commission to address some of the more problematic issues presented by this matter, such as the market power of CLECs. As such, C&W USA believes that the Commission will ultimately find this approach to be less burdensome and more effective than others proposed in the Notice. Accordingly, C&W USA strongly urges the Commission to adopt CompTel's proposal and establish benchmark terminating access rates for CLECs.

II. THE COMMISSION SHOULD CLARIFY ITS PROPOSAL ON CAPACITY-BASED CHARGES FOR LOCAL SWITCHING AND SOLICIT ADDITIONAL COMMENT BEFORE ADOPTING ANY RULES ON THIS MATTER.

The Commission proposes various changes to the rate structure for local switching in its Notice. Among other things, the Commission solicits comment on replacing the existing per-minute or per-call local switching rate structure with a capacity-based rate structure, which would require price cap LECs to charge for local switching on the basis of the number of trunks connected to a given end office switch. The Commission believes that such a rate structure would more accurately reflect the manner in which costs for local switching are incurred and

thus would encourage more efficient use and deployment of the public telecommunications network.⁶

C&W USA urges the Commission to clarify its proposal on capacity-based rate structures for local switching, and solicit further comment before adopting any changes to its rules in this regard. The scope and implications of the Commission's proposal are not clear at this point. To the extent that the Commission proposes to *completely* eliminate local switching priced on a per-minute basis, C&W USA strongly objects to the Commission's proposal, as this may eliminate the availability of per-minute shared transport between the end office and the tandem switch as well. This issue was not discussed in the Notice, yet its impact on smaller IXCs such as C&W USA would be quite severe. Small carriers need to be able to purchase shared transport and local switching priced on a per-minute basis in order to operate efficiently and compete effectively in the market. If shared transport and local switching are not available at per-minute rates, then small IXCs will be forced to purchase local switching and dedicated transport capacity in amounts that exceed their actual requirements to ensure that they have adequate capacity available for peak and overflow traffic. This increase in the unit cost of local switching and shared transport for smaller IXCs will penalize these carriers in their attempts to compete in the market and ultimately will limit the options available to U.S. consumers for long distance service.⁷

On the other hand, C&W USA would not necessarily object if the Commission's intention is to allow ILECs to charge per-minute rates for local switching, but require that the

⁶ Notice at ¶¶ 207, 211.

⁷ The Commission suggests in the Notice that local switching could become available on a per-minute basis through resale, and implies that this might mitigate the negative impact of its proposal on smaller IXCs. Notice at ¶ 216. However, there is no assurance that a
(continued...)

rates be computed on capacity-based costs. This approach may achieve the Commission's goal of having the rates for local switching more accurately reflect the costs of local switching capacity without compromising the ability of smaller IXC's to compete effectively and efficiently in the market. C&W USA would not object to this proposal as long as both large and small carriers are equally able to share capacity-based costs.

In light of these facts, C&W USA believes that the Commission cannot state with any certainty at this time that a change to a capacity-based rate structure for local switching would result in benefits for U.S. consumers. As such, C&W USA urges the Commission to defer final action on this matter until it clarifies its proposal and solicits further comment from the carriers and the public.⁸

III. THE COMMISSION SHOULD DEFER ANY ACTION ON GEOGRAPHICAL DEAVERAGING OR OTHER PRICING FLEXIBILITY MEASURES UNTIL ACCESS CHARGE REFORM IS COMPLETE AND THE IMPACT OF PHASE I REGULATORY RELIEF IS BETTER UNDERSTOOD.

In the Notice, the Commission seeks comment on various measures that would afford greater pricing flexibility to price cap ILECs. Among other things, the Commission proposes to amend its rules to permit these carriers to deaverage common line and traffic-sensitive access charges within their study areas and without a competitive showing.⁹ The Commission also

(...continued)

resale market for local switching would develop in a timely manner, or that local switching would be available on a resale basis at reasonable rates.

⁸ In giving further consideration to its proposal, the Commission may want to review what the states have done in regulating the rate structure for local switching associated with the transport and termination of local calls. It is C&W USA's understanding that no state is actively considering a capacity-based rate structure for local switching.

⁹ Notice at ¶ 190.

solicits comment on various aspects of Phase II pricing flexibility for common line and traffic-sensitive services, including appropriate “triggers” for and forms of regulatory relief.¹⁰

C&W USA believes that any consideration of additional pricing flexibility proposals for price cap ILECs is premature. Access charges are *still* significantly in excess of cost. In light of the inability of the marketplace to achieve significant reductions in access charges, C&W USA sees no reason why price cap ILECs should be relieved of those regulatory requirements that restrain access rates at this time.

Furthermore, the price cap ILECs have already been granted considerable regulatory relief. The Commission adopted its Phase I pricing flexibility framework just three months ago. This regulatory scheme will permit price cap ILECs to offer contract tariffs as well as volume and term discounts upon a showing that competition in the market (as evidenced by certain triggering events) will prevent the ILECs from engaging in anticompetitive behavior. Since no ILEC has even attempted to demonstrate compliance with the Phase I triggers (to the best of C&W USA’s knowledge and belief), there has been no opportunity to evaluate the appropriateness of the triggers selected by the Commission or the impact of Phase I regulatory relief on the market. Until such time as the Commission and the industry have gained “real world” experience with the Phase I scheme, C&W USA believes it is inappropriate to consider additional pricing flexibility measures for price cap ILECs.

Finally, C&W USA notes that the Commission is currently considering other proposals for access reform which, if adopted, would alter dramatically the manner in which price cap ILECs recover access revenues, and would grant the ILECs other forms of regulatory relief. Most notably, the CALLS proposal would, among other things, allow the price cap ILECs to

¹⁰ Notice at ¶ 200.

geographically deaverage their rates for access services upon the satisfaction of certain requirements.¹¹ Adoption of new rules regarding geographical deaveraging or other forms of pricing flexibility at this point could prejudice the Commission's consideration of those access reform proposals.

In light of these facts, C&W USA strongly urges the Commission to defer any consideration of geographic deaveraging or other forms of additional regulatory relief for price cap ILECs until a more appropriate time.

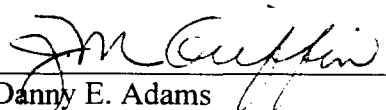
IV. CONCLUSION

For these reasons, the Commission should adopt CompTel's proposal regarding CLEC terminating access charges; clarify and solicit additional comment regarding its proposal on capacity-based rate structures for local switching; and defer any action on additional regulatory relief for price cap ILECs.

Respectfully Submitted,

CABLE & WIRELESS USA, INC.

Rachel J. Rothstein
Brent M. Olson
CABLE & WIRELESS USA, INC.
8219 Leesburg Pike
Vienna, VA 22182
(703) 760-3865

By: 
Danny E. Adams
Robert J. Aamoth
Joan M. Griffin
KELLEY DRYE & WARREN LLP
1200-19th Street N.W., Suite 500
Washington, D.C. 20036
(202) 955-9600

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Its Attorneys

¹¹ See Access Charge Reform, *Notice of Proposed Rulemaking (CALLS Proposal)*, FCC 99-235, rel. Sept. 15, 1999.